Public Prosecutor v Mohd Ali bin Jaafar

HIGH COURT (MELAKA) — CRIMINAL APPEAL NO 42–10 OF 1996
AUGUSTINE PAUL JC
24 JANUARY 1997

Evidence *— Statement — Admissibility of statement — Statement made by accused to complainant in corruption case — Whether admissibility of such statement barred by s 31A of the Evidence Act 1950 — Interpretation of s 31A of the Evidence Act 1950*

The accused was charged under the Prevention of Corruption Act 1961 and the substance of the allegation was that the accused had solicited sexual favours from the complainant in return for expediting the renewal of her international passport. The defence, relying on s 31A of the Evidence Act 1950 ('the Act'), raised an objection against certain evidence relating to his request for sexual favours. The defence argued that the evidence to be given by the complainant was based on an alleged conversation between her and the accused relating to his request for sexual favours. This, it was submitted, would fall within s 31A of the Act and it was therefore inadmissible unless it fulfilled the requirements of the section. The sessions court judge upheld the objection. Following the close of the prosecution's case, the sessions court judge acquitted and discharged the accused without calling for his defence. The prosecution appelaed. The appeal was based on the interpretation of s 31A of the Act.

Held, ordering a retrial:

(1) The fundamental rule of interpretation of a statute is to ascertain the intention of Parliament. If the words of a statute are in themselves precise and unambiguous the court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, adhering to their grammatical and ordinary meaning would lead to some absurdity, or some repugnancy or inconsistency with the other parts of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further (see p 229D–G); *Trustees of the Kheng Chiu Tin Hon Kong and Burial Ground v Collector of Land Revenue* [1992] 1 SLR 425, *Hongkong Bank (M) Bhd v Raja Letchumi a/p Ramarajoo* [1996] 2 MLJ 34, *Heydon's case* (1584) 76 ER 637 and *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 MLJ 481 followed.

(2) In order to activate the restrictions contained in s 31A of the Act, the statement must, in the first place, be already admissible in evidence under or by virtue of any written law. It is only then that the section will modify the rules of evidence provided by such other written law. The section will therefore not apply to a statement for the admissibility of which no provision has been made in any written law (see p 231A–B).

(3) The word 'statement' in s 31A of the Act is used in a wide sense; thus s 31A of the Act is not confined in its operation to cautioned statements (see p 231E).

(4) The words '... charged with an offence ...' must be treated as an adjectival phrase to describe the person whose statement alone will come within the ambit of the section. Thus the statement referred to in s 31A of the Act must be that of a person who has been charged with an offence at the time of the proceedings and not at the time of the making of the statement. It follows, therefore, that the section envisages a statement made by a person whether before or after he has been charged with an offence (see pp 231I–232A); *Goh Seng Kok v PP* [1940] MLJ 82 followed.

(5) Both paras (a) and (b) of s 31A of the Act should be read conjunctively and as a whole. The cumulative effect of reading them together is that the statement made by the person charged with an offence as stated in para (b) is the statement he made to an officer as stated in para (a). Thus the statement contemplated by the section would be one that is made by a person charged with an offence to an officer. The substitution of 'or' with 'and' gives it an 'and/or' effect (see p 236A–B); *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 2 All ER 97 and *Horsey v Caldwell* (1946) 73 CLR 304 followed.

(6) Thus evidence of the statement may be given by the person charged with an offence or by the officer to whom the statement was made or by both. This interpretation would also produce harmony between the s 31A and s 60 of the Act. The corollary is that a statement made by a person charged with an offence to a person who is not an 'officer' within the meaning of para (a) may be given in evidence by the person to whom it was made as s 31A would be inapplicable (see p 236C–D); *Australian Alliance Assurance Co Ltd v A-G of Queensland* (1916) St R Qd 135 and *Minister for Resources v Dover Fisheries Pty Ltd* (1993) 116 ALR 54 followed.

(7) Section 31A of the Act does not apply to just any statement made by a person at any time to any person. It applies *only* to a statement made by a person charged with an offence to an officer from an investigation agency. In the present appeal, the evidence excluded by the sessions court judge referred to conversations between the accused and the complainant which did not amount to statements made to an officer within the meaning of s 31A (see p 236E–F).

[Bahasa Malaysia summary

Tertuduh telah didakwa di bawah Akta Pencegahan Rasuah 1961 dan kandungan pertuduhan tersebut adalah bahawa tertuduh telah membuat permintaan seks daripada pengadu sebagai balasan untuk mempercepatkan proses pembaharuan paspot antarabangsa pengadu.

Pihak pembela, berdasarkan s 31A Akta Keterangan 1950 ('Akta tersebut'), telah menimbulkan bantahan terhadap bukti bersangkutan dengan permintaannya untuk seks. Pihak pembela telah menghujahkan bahawa bukti yang hendak diberikan oleh pengadu adalah berdasarkan apa yang dikatakan dalam satu perbualan di antara pengadu dengan tertuduh berkenaan dengan permintaannya untuk seks. Ini, seperti yang dihujahkan, akan termasuk dalam lingkungan s 31A Akta tersebut dan oleh itu adalah tidak boleh diterima kecuali jika ia memenuhi keperluan seksyen tersebut. Hakim mahkamah sesyen telah membenarkan bantahan itu. Berikutan daripada penutupan kes pendakwaan, hakim mahkamah sesyen telah membebaskan and melepaskan tertuduh tanpa memanggil pembelaannya. Pihak pendakwa telah merayu. Rayuan ini adalah berdasarkan kepada tafsiran s 31A Akta tersebut.

Diputuskan, memerintahkan perbicaraan semula:

(1) Peraturan asas tafsiran sesuatu undang-undang ialah untuk menentukan niat Parlimen. Jika perkataan-perkataan sesuatu undang-undang itu secara sendirinya adalah tepat dan tidak mengelirukan mahkamah mestilah memberi kesan kepadanya mengikut maknanya yang lazim dan biasa, kerana perkataan-perkataan tersebut adalah punca yang paling baik menyuarakan niat Parlimen. Jika, dengan mengikut tatabahasa dan maknanya yang lazim, akan memberikan makna yang tidak masuk akal, atau bertentangan, atau tidak selaras dengan bahagian-bahagian lain undang-undang tersebut, maka tatabahasa dan maksud lazim perkataan-perkataan tersebut boleh diubahsuai supaya ianya tidak bertentangan dan mempunyai maksud yang selaras, tetapi hanya setakat itu sahaja (lihat ms 229D–G); *Trustees of the Kheng Chiu Tin Hon Kong & Burial Ground v Collector of Land Revenue* [1992] 1 SLR 425, *Hongkong Bank (M) Bhd v Raja Letchumi a/p Ramarajoo* [1996] 2 MLJ 34, *Heydon's case* (1584) 76 ER 637 dan *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 MLJ 481 diikut.

(2) Untuk mengaktifkan sekatan-sekatan yang terdapat di dalam s 31A Akta tersebut, pernyataan itu mestilah, pertamanya, telah boleh diterimamasuk sebagai bukti di bawah atau mengikut sebarang undang-undang bertulis. Hanya dalam keadaan sebegitu maka seksyen tersebut akan mengubahsuaikan undang-undang keterangan yang diperuntukkan oleh mana-mana undang-undang bertulis yang lain. Maka seksyen tersebut tidak boleh dipakai ke atas pernyataan yang mana penerimaannya tidak terkandung di dalam mana-mana undang-undang bertulis (lihat ms 231A–B).

(3) Perkataan 'pernyataan' di dalam s 31A Akta tersebut digunakan dalam makna yang luas; oleh itu s 31A Akta tersebut tidak tersekat operasinya kepada pernyataan beramaran (lihat ms 231E).

(4) Perkataan-perkataan '... telah didakwa dengan suatu kesalahan ...' haruslah dianggap sebagai frasa sifatnama untuk

menggambarkan seseorang yang pernyataannya sahaja akan tertakluk kepada lingkungan seksyen itu. Maka, pernyataan yang dirujuk di dalam s 31A Akta tersebut mestilah daripada seseorang yang telah didakwa dengan suatu kesalahan pada masa prosiding itu, dan bukannya semasa pernyataan tersebut dibuat. Dengan itu, seksyen tersebut menjangkakan suatu pernyataan yang dibuat oleh seseorang sama ada sebelum atau selepas dia didakwa dengan suatu kesalahan (lihat ms 231I–232A); *Goh Seng Kok v PP* [1940] MLJ 82 diikut.

(5) Kedua-dua perenggan (a) dan (b) s 31A Akta tersebut sepatutnya dibaca secara berhubungan dan secara keseluruhannya. Kesan kumulatif membaca perenggan-perenggan tersebut bersama adalah bahawa pernyataan yang telah dibuat oleh orang yang dituduh dengan suatu kesalahan seperti yang dinyatakan di perenggan (b) adalah pernyataan yang dibuatnya kepada seseorang pegawai seperti yang dinyatakan di dalam perenggan (a). Oleh itu, pernyataan yang dijangkakan oleh seksyen tersebut adalah pernyataan yang dibuat oleh orang yang didakwa dengan suatu kesalahan kepada seorang pegawai. Penggantian perkataan 'atau' dengan 'dan' memberikannya kesan 'dan/atau' (lihat ms 236A–B); *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 2 All ER 97 dan *Horsey v Caldwell* (1946) 73 CLR 304 diikut.

(6) Oleh itu, bukti pernyataan itu boleh diberi oleh orang yang didakwa dengan suatu kesalahan atau oleh pegawai yang menerima pernyataan tersebut atau oleh kedua-duanya. Tafsiran ini akan menghasilkan keselarasan di antara s 31A tersebut dan s 60 Akta tersebut. Ekoran daripada ini adalah bahawa pernyataan yang dibuat oleh orang yang didakwa dengan suatu kesalahan kepada seseorang yang bukan pegawai di dalam maksud perenggan (a) boleh diberi sebagai keterangan oleh orang yang menerima pernyataan tersebut kerana seksyen tersebut tidak terpakai (lihat ms 236C–D); *Australian Alliance Assurance Co Ltd v A-G of Queensland* (1916) St R Qd 135 dan *Minister for Resources v Dover Fisheries Pty Ltd* (1993) 116 ALR 54 diikut.

(7) Seksyen 31A Akta tersebut tidak terpakai kepada sebarang pernyataan yang dibuat oleh seseorang pada bila-bila masa kepada sesiapapun. Ia hanya boleh dipakai kepada pernyataan yang dibuat oleh orang yang didakwa dengan suatu kesalahan kepada pegawai agensi penyiasatan. Di dalam rayuan ini, keterangan yang diketepikan oleh hakim mahkamah sesyen merujuk kepada perbualan di antara tertuduh dan pengadu yang tidak berjumlah kepada pernyataan yang dibuat kepada seorang pegawai mengikut makna s 31A (lihat ms 236E–F).]

Cases referred to

A-G v Beauchamp [1920] 1 KB 659 (refd)
AP Chandarasekara v R AIR 1937 PC 24 (refd)
Australian Alliance Assurance Co Ltd v A-G of Queensland (1916) St R Qd 135 (folld)

Dato Mohamed Hashim Shamsuddin v A-G of Hong Kong [1986] 2 MLJ 112 (refd)
Federal Steam Navigation Co Ltd v Department of Trade and Industry [1974] 2 All ER 97 (follld)
Goh Seng Kok v PP [1940] MLJ 82 (follld)
Heydon's case (1584) 76 ER 637(follld)
Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481 (follld)
Hongkong Bank (M) Bhd v Raja Letchumi a/p Ramarajoo [1996] 2 MLJ 34 (follld)
Horsey v Caldwell (1946) 73 CLR 304 (follld)
Lim Moh Joo v PP [1970] 2 MLJ 113 (refd)
Luby v Newcastle-Under-Lyme Corp [1965] 1 QB 214 (refd)
Mersey Docks & Harbour Board v Henderson Bros (1888) 13 App Cas 595 (refd)
Minister for Resources v Dover Fisheries Pty Ltd (1993) 116 ALR 54 (follld)
PP v Leong Kuai Hong [1981] 1 MLJ 246 (refd)
PP v Lin Lian Chen [1991] 1 MLJ 316; [1992] 2 MLJ 561 (refd)
PP v Mohd Noor bin Jantan [1979] 2 MLJ 289 (refd)
PP v Paneerselvan & Ors [1991] 1 MLJ 106 (refd)
PP v Su Lian Yu [1976] 2 MLJ 128 (refd)
R v Oakes [1959] 2 All ER 92 (refd)
Seaford Court Estates Ltd v Asher [1949] 2 All ER 155 (refd)
Tan Kim Chuan & Anor v Chandu Nair [1991] 2 MLJ 42 (refd)
Trustees of the Kheng Chiu Tin Hon Kong & Burial Ground v Collector of Land Revenue [1992] 1 SLR 425 (follld)
United Hokkien Cemeteries v The Board, Majlis Perbandaran Pulau Pinang [1979] 2 MLJ 121 (refd)

Legislation referred to

Evidence Act 1950 ss 31A, 60
Evidence (Amendment) Act 1993
Criminal Procedure Code (FMS Cap 6) s 113
Prevention of Corruption Act 1961 s 15

Md Radzib bin Othman (Deputy Public Prosecutor) for the Public Prosecutor.
V Rajadevan (*Malek & Devan*) for the respondent.

Cur Adv Vult

Augustine Paul JC: In this case two charges were preferred against the accused in the sessions court at Melaka. They are as follows:

First charge

Bahawa kamu pada 10 Jun 1995 lebih kurang jam 6.35 petang di rumah No 3501–6 Taman Imigresen, Tanjung Kling, di dalam Daerah Melaka Tengah di dalam Negeri Melaka telah secara rasuah meminta suatu suapan iaitu

pertolongan seks dari seorang Iee Bee Fong sebagai dorongan kepada kamu iaitu seorang pegawai imigresen di Jabatan Imigresen Melaka untuk mempercepatkan perlanjutan tempoh sahlaku paspot Malaysia No 4917928 kepunyaan Iee Bee Fong tersebut dan dengan itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 3(a)(ii) Akta Pencegah Rasuah 1961 (Akta 57).

Second Charge

Bahawa kamu pada 17 Jun 1995 lebih kurang pukul 8.50 malam di Tip Top Guest House, Taman Melaka Raya, di dalam Daerah Melaka Tengah, di dalam Negeri Melaka, sebagai ejen kepada Kerajaan Malaysia, iaitu seorang pegawai imigresen yang bertugas di Jabatan Imigresen Melaka, telah secara rasuah cuba mendapat untuk diri kamu suatu suapan, iaitu, pertolongan seks dari Iee Bee Fong tersebut sebagai dorongan untuk kamu melakukan sesuatu perbuatan berhubung dengan hal ehwal prinsipal kamu, iaitu, membantu Iee Bee Fong mendapatkan perlanjutan tempoh sahlaku Paspot Malaysia No 4917928 kepunyaan Iee Bee Fong dan dengan itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 4(a) Akta Pencegah Rasuah 1961 (Akta 57).

The accused claimed trial to both the charges. The substance of the allegation against the accused is that he had solicited sexual favours from the complainant in return for expediting the renewal of her international passport. Evidence relating to that allegation was therefore of critical importance to the prosecution. The smooth flow of the prosecution's case was short circuited by an objection raised by the defence on the admissibility of certain evidence to be adduced by them from the complainant on an alleged conversation between her and the accused relating to his request for sexual favours after three witnesses had given formal evidence. Learned counsel for the defence based his objection on s 31A(1) of the Evidence Act 1950 ('the Act'), to which I shall refer in more detail shortly, and said that it applies to any statement made by any person, which would include the accused, and that such evidence should therefore be only admitted in evidence in accordance with the requirements of the section. He added that as the evidence to be given by the complainant would fall within that section it is therefore inadmissible unless given as prescribed. The learned sessions court judge upheld the objection raised resulting in the prosecution being precluded from adducing in evidence the:

(a) oral conversation between the accused and the complainant at the Immigration Department, Melaka on 7 June 1995;

(b) tape recorded telephone conversation between the accused and the complainant on 10 June 1995 between 5 pm and 6 pm;

(c) tape recorded conversation between the accused and the complainant on 10 June 1995 at the Ramada Hotel, Melaka;

(d) tape recorded telephone conversation between the accused and the complainant on the afternoon of 17 June 1995; and

(e) the tape recorded telephone conversation between the accused and the complainant on the evening of 17 June 1995.

The prosecution was therefore compelled to close its case without adducing material evidence that it had on the principal issue to be proved. The learned sessions court judge then promptly acquitted and discharged the

A accused without calling upon him to enter his defence. This appeal is by the prosecution against the order made.

When the appeal came up for hearing before me on 17 January 1997 the learned deputy public prosecutor contended that pursuant to the defence objection being upheld, the prosecution was unable to adduce the B evidence as enumerated earlier. As a result, he added, the whole case for the prosecution crumbled. In his submission on law he said that in construing the section, the court must have regard to the intention of Parliament in enacting the section. In support he referred to *Seaford Court Estates Ltd v Asher* [1949] 2 All ER 155 and *Lim Moh Joo v PP* [1970] 2 MLJ 113. He said that the section was introduced to overcome the effect of the C judgment of the Supreme Court in *PP v Lin Lian Chen* [1992] 2 MLJ 561. Construed in that light he opined that the section applied only to cautioned statements made by a person to an officer after his arrest and it therefore did not apply to the conversation between the complainant and the accused. In his reply learned counsel for the defence argued that the section is D ambiguous and does not specifically mention the type of statements to which it refers. He added that penal statutes must be construed strictly and referred to *PP v Leong Kuai Hong* [1981] 1 MLJ 246. He concluded by taking the stand that the section, as it stands, refers to any statement made by a person charged with an offence to any person with the result that evidence of what the accused had told the complainant can be given E only by the accused himself.

In the light of the arguments advanced before me by both parties it is superfluous to state that the outcome of the appeal rests on the interpretation to be accorded to the section. I intimated to both parties that I shall deliberate over the matter and deliver judgment on 24 January F 1997 which I do so now.

Section 31A was added to the Act by the Evidence (Amendment) Act 1993 and came into force on 15 July 1993. It reads as follows:

> (1) Where in any criminal proceedings, a statement, whether written or verbal, made by any person charged with an offence, is admissible in G evidence under or by virtue of any written law, then, notwithstanding anything contained in that written law, such statement shall not be admitted in evidence, or produced in, or considered by, the court, unless evidence of such statement is given
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> (a) by the officer to whom the statement is made; or
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> (b) by the person charged with the offence. H
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> (2) Subsection (1) shall not affect the application of the provisions of sections 90A, 90B, 90C, 145 and 155.

Subsection (2) has listed the instances when the new law on the admissibility of statements as described in the section shall not apply. What now arises for scrutiny is the precise scope and ambit of the section. Hamid Sultan I bin Abu Backer in his article entitled 'Is s 31(A) of the Act true or is it a tribute to Sir James Fitzjames Stephen?' [1995] 1 MLJ xcviii said:

> In reading the section, it is clear, by applying the literal rule of construction, that no evidence of written or oral statement of the accused can be admissible in evidence unless it is introduced through the officer to whom it is made or

through the accused: see *R v Inhabitants of Ramsgate* (1827) 6 B & C 712. The section has far-reaching consequences, and if true, gives the defence a protection which did not exist in English common law and which even Sir James Fitzjames Stephen, who drafted the Indian Evidence Act 1872 after which our Act is modelled, did not provide for. If the intention of the legislature is true, our draftsman should be saluted for making a new innovation in the law of evidence. If s 31A is literally construed, *evidence of a complainant or third parties who have heard and seen what the accused said or wrote is not admissible in evidence and the court is totally prohibited from even considering such evidence* if the condition in s 31A is not satisfied. For example, in a corruption case the complainant will not be permitted to give evidence and say that the accused demanded money.

The Act which is procedural in nature, is only an aid to justice. Justice in criminal proceedings does not only mean justice to the accused, but also justice to the victim. Whether s 31A in its totality is an aid to justice is truly questionable. It is said that s 31A was introduced as a result of the case of *PP v Lin Lian Chen* [1992] 2 MLJ 561.

The learned writer would therefore seem to take the view that on a literal interpretation the section applies to any statement that is sought to be introduced in evidence. That, he said, amounted to '... making a new innovation in the law of evidence.'

Before I proceed any further it is perhaps necessary to bear in mind the proper rule of construction to be applied in interpreting the section. Abdul Hamid Omar LP referred to the various rules of construction in *Tan Kim Chuan & Anor v Chandu Nair* [1991] 2 MLJ 42 and said at p 43–44,

> We hasten to add that we are conscious that there are two schools of thought relating to statutory interpretation. Lord Denning favoured a creative role for judges, taking on themselves the task of ascertaining the purpose of an Act and the ironing out of creases which may appear. Lord Denning had observed in *Seaford Court Estate Ltd v Asher* [1949] 2 KB 481 at p 499 that:
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> > '... It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set out to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which give rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.'
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> The other school, notably Lord Simonds, did not share Lord Denning's approach and argued against such a creative role preferring to leave all aspects of the legislative function to Parliament, 'if a gap is, disclosed, the remedy lies in an amending Act' (*Magor & St Mellons RDC v Newport Corp* [1952] AC 189).
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> In the same case Lord Morton of Henryton remarked that:
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> > 'In so far as the intention of Parliament or of ministers is revealed in Acts of Parliament or Orders, either by the language used or by necessary implication, the courts should, of course, carry these intentions out; but it is not the function of any judge to fill in what he conceives to be the gaps in an Act of Parliament. If he does so, he is usurping the function of the legislature.'

A While we respect both schools, we do not really have to prefer any of these opinions. We also need not dwell much on various rules and aids to construction of statutes except to say, in general, that we have always been inclined to follow purposive and literal constructions which means that the literal meaning of an Act will be followed where that meaning is in accordance with the legislative purpose (see the decisions in *United Hokkien Cemetries* B *Penang v Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121; *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Vengadasalam v Khor Soon Weng & Ors* [1985] 2 MLJ 449).

In this regard Chang Min Tat FJ said in *United Hokkien Cemetries Penang v The Board, Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121 at p 123:

C As was said by Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850 at p 899, the literal method of construction is now completely out of date and has been replaced by a 'purpose approach'. It ought to be noted that this purposive approach is not a modern fashion. Since the 17th century, it has been the task of the judiciary to interpret an Act 'according to the intent of them that made it': Coke 4 Inst 330.

D Thus the fundamental rule of interpretation of a statute is to ascertain the intention of Parliament. If, the words of a statute are in themselves precise and unambiguous the court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and E ordinary meaning would lead to some absurdity, or some repugnancy or inconsistency with the other parts of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further (see *Trustees of the Kheng Chiu Tin Hon Kong and Burial Ground v Collector of Land Revenue* [1992] 1 SLR 425). In *Hongkong Bank (M) Bhd v Raja Letchumi a/p Ramarajoo* [1996] 2 MLJ 34 F Gopal Sri Ram JCA said in the Court of Appeal that ever since *Heydon's case* (1584) 76 ER 637 courts are obliged to look at the historical background to a statute in order to ascertain the purpose for which it was enacted. In *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481 his Lordship had occasion to consider *Heydon's case* in G more detail and said this at p 509:

In *Heydon's case* (1584) 76 ER 637, all the judges of the realm assembled to render their opinion upon an Act of Parliament which they were called upon to interpret. Their resolution, which has come to be known as the rule in *Heydon's case*, was expressed in the following terms:

H 'And it was resolved by them (the judges) that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st What was the common law before the making of the Act;

2nd What was the mischief and defect for which the common I law did not provide;

3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and

4th The true reason of the remedy: and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress

> subtle inventions and evasions for continuance of the mischief, and *pro privato commodo* (for private convenience) and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico* (for public benefit).'

In the light of the difficulties encountered in construing the section it is necessary to look at the purpose for which it was enacted. Such purpose can normally be gathered from the Bill which introduced it. However the Bill to the Evidence (Amendment) Act 1993 (Act A851) which introduced the section contains no information on its purpose and object. Where the object and reason for the introduction of a statute are not disclosed in the Bill we have to look at the character of the amendment for that purpose (see *PP v Su Lian Yu* [1976] 2 MLJ 128), the social conditions which gave rise to it and the mischief it intended to remedy (see *Seaford Court Estate Ltd v Asher* [1949] 2 All ER 155). Having thus considered the matter I agree with the learned deputy public prosecutor that the object of the section was to nullify the effect of the Supreme Court decision in *PP v Lin Lian Chen* [1992] 2 MLJ 561. Prior to *Lin Lian Chen* the law on the proper manner of tendering a cautioned statement in evidence was as stated by Suffian LP in *PP v Mohamed Noor bin Jantan* [1979] 2 MLJ 289 at p 290 in the following terms:

> The prosecution is free to tender or not in evidence the cautioned statement; but if the recording officer gives evidence the defence is entitled to cause him to tender it in evidence even though the prosecution does not itself want to introduce it as part of its case. But if the recording officer is not called by the prosecution he must be called by the defence during the course of the defence case for this purpose.

Thus a cautioned statement could be tendered in evidence in the course of the case for the prosecution only through the recording officer. If the recording officer was not called as a witness by the prosecution there was no way in which the defence could cause the cautioned statement to be tendered in evidence, if so required, to show consistency in the defence raised or for any other purpose. In *PP v Lin Lian Chen* [1991] 1 MLJ 316 Mohtar Abdullah J (as he then was), at first instance, meticulously distinguished *Mohamed Noor bin Jantan* in his judicious and groundbreaking judgment and decidedly declared that a cautioned statement can be introduced in evidence by the investigation officer who had possession of it in the course of the case for the prosecution if the defence so desires. His Lordship's views found unanimous favour with the Supreme Court. This was followed by the addition of the section to the Act imposing restrictions on the manner in which such statements can be introduced in evidence. The reason for the introduction of the section is therefore clear. It is against this background that the section must be interpreted.

In so doing I shall consider the section under the following heads:

(a) The statement must be admissible under another law.

(b) The characteristics of the statement.

(c) The person making the statement.

(d) The person to whom the statement must have been made.

(a) The statement must be admissible under another law

In order to activate the restrictions contained in the section the statement must, in the first place, be already '... admissible in evidence under or by virtue of any written law ... '. It is only then that the section will modify the rules of evidence provided by such other written law. The section will therefore not apply to a statement for the admissibility of which no provision has been made in any written law.

(b) The characteristics of the statement

The section refers to '... a statement, whether written or verbal ...'. The word 'written' needs no elucidation as it speaks for itself. The word 'verbal' requires to be examined. In *AP Chandarasekara v R* AIR 1937 PC 24, the Privy Council held that a statement made by means of signs and nods constituted a verbal statement. Thus the word 'verbal' is wider in scope than 'oral' and the ambit of statements coming under the section therefore goes beyond what is orally stated. The word 'statement' has not been defined in the Act. In *PP v Paneerselvan & Ors* [1991] 1 MLJ 106 Edgar Joseph Jr J (as he then was) pointed out that the word 'statement' in s 157 of the Act means 'something that is stated' and the element of communication to another person is not included in it. However, it is my view that the element of communication to another person is a constituent part of the word 'statement' in this section as sub-s 1(a) has in contemplation a statement given 'to' an officer. A statement given 'to' someone clearly contemplates communication to another person. The effect of para (b) in this regard will become apparent in a later part of the judgment. In the light of the wide definition of the word 'statement' I am of the view that the section is not merely confined in its operation to cautioned statements.

(c) The person making the statement

In his submission the learned deputy public prosecutor contended that the section only applies to a statement made by a person after his arrest. He probably construed the words '... charged with an offence ...' as an adverbial phrase to qualify the time at which the statement ought to have been made by a person before it can come within the purview of the section. Such an interpretation, if correct, would transcend the boundaries of the argument advanced and lead to the illogical conclusion that the statement must be one that was made by a person after he had been charged with an offence as stated in the section because a person arrested need not necessarily be charged with an offence. In the normal course of events a statement is made by a person before he is charged. It is on such statements that a prosecution is based. Rarely does a person make a statement after he has been charged. Thus if such an interpretation is given it will render the section otiose as the need to invoke it may not arise at all, for reasons too plain to be stated, and thus defeat the intention of Parliament in enacting it. In my opinion the words '... charged with an offence ...' must be treated as an adjectival phrase to describe the person whose statement alone will come within the ambit of the section. Thus the statement must be that of a person who has been charged with an offence at the time of the proceedings and not at the time of making it. It follows,

therefore, that the section envisages a statement made by a person whether before or after he has been charged with an offence. A somewhat similar problem arose in *Goh Seng Kok v PP* [1940] MLJ 82 where s 113(ii) of the Criminal Procedure Code (FMS Cap 6) as it then stood fell for interpretation. It reads as follows:

> Where any witness is called for the prosecution or for the defence, other than the accused, the court shall on the request of the accused or the prosecutor refer to any statement made by such witness to a police officer in the course of a police investigation under this chapter, and only then, if the court thinks it expedient in the interest of justice, direct the accused to be furnished with a copy thereof, and such statement may be used to impeach the credit of such witness in the manner provided by the Evidence Enactment.

In that case two statements made by two defence witnesses were put to them. Objection was taken on the ground, inter alia, that the statements were made by persons who were accused persons at the time they made the statement. In answer to that Poyser CJ said at p 83:

> The statements were recorded in the course of a police investigation and were typed out when they were made, and the fact that these witnesses were accused persons at the time they made their statement does not in my opinion affect the matter. The point is they were not accused persons when their statements were referred to.

(d) The person to whom the statement must have been made

As I said under head (b) above the statement must be one that has been communicated to another person. A matter of concern is the person to whom the statement must have been made by the person charged with an offence in order to determine the category of persons to whom the section shall apply. The main part of the section contains no guidance on this aspect. However paras (a) and (b) of the section state that the statement is not admissible unless evidence of such statement is given by the officer to whom it is made or by the person charged with the offence. This has a definite determining effect on the persons to whom the statement must have been made, and, consequently the persons to whom the section shall be applicable. This requires an analysis of both the paragraphs as both of them are, on a literal reading, disjunctive by virtue of being separated by the conjunction 'or' and, if so interpreted, will provide different answers to the problem at hand. The word 'or' is defined in *Black's Law Dictionary* (6th Ed) as follows:

> *Or, conj* A disjunctive particle used to express an alternative or to give a choice of one among two or more things. It is also used to clarify what has already been said, and in such cases, means 'in other words', 'to wit', or 'that is to say'. The word 'or' is to be used as a function word to indicate an alternative between different or unlike things: *City of Toledo v Lucas County Budget Commission* 33 Ohio St 2d 62, 294 NE 2d 661, 663. In some usages, the word 'or' creates a multiple rather than an alternative obligation, where necessary in interpreting an instrument, 'or' may be construed to mean 'and': *Atchison v City of Englewood, Colo* 568 P 2d 13, 18.

A I interpolate to add that para (a) represents the law enunciated in *PP v Mohamed Noor bin Jantan* [1979] 2 MLJ 289 which was distinguished in *PP v Lin Lian Chen* [1992] 2 MLJ 561 while para (b) extends *PP v Mohamed Noor bin Jantan* by allowing the accused to give evidence of the statement himself without the need to call the person to whom it was made, the effect being the same, that is to say, to prohibit the accused from introducing the statement in the course of the case for the prosecution.

B

Paragraph (a)

This paragraph provides that evidence of the statement shall be given by the officer to whom it was made. As it refers to a statement made to an 'officer' it cannot include a statement which was made to a person who is not an 'officer'. This is for the obvious reason that a statement made to someone who is not an 'officer' is not a statement made 'to' an 'officer' within the meaning of the section. Thus this paragraph is confined in its operation to statements made to an 'officer'. That necessitates a consideration of the meaning of the word 'officer' in the section. The word is neither defined in the section nor in the Act. Bearing in mind the purpose for which the section was enacted and the language employed in it to prohibit the admissibility in criminal proceedings of a statement made by a person charged with an offence unless evidence of it is given, inter alia, by the 'officer' to whom it was made the word 'officer' must, in my view, refer to an officer who is involved, directly or indirectly, in the investigation of an offence in respect of which the statement was made and not just any person who may be styled as an officer. An 'officer' who is involved in an investigation would normally hail from agencies such as the police, customs, immigration and the anti-corruption agency. My conclusion is fortified by the fact that some written laws that the section would modify like s 113 of the Criminal Procedure Code (FMS Cap 6) and s 15 of the Prevention of Corruption Act 1961 which must now be read with the section, deal with statements made to police officers and officers from the Anti Corruption Agency respectively. The meaning of the word 'officer' when read with these provisions becomes obvious.

C D E F G

Paragraph (b)

This paragraph deals with evidence of the statement being given by the person charged with the offence. That, on a literal construction and read disjunctively from para (a), would make both the paragraphs mutually exclusive. This means that para (b) is an alternative method of proof of the statement without being affected by the strictures contained in para (a). As I said earlier the person to whom the statement must have been made in order to make the section applicable can be ascertained only from the two paragraphs. Once this paragraph is given force on its own without the intervention of para (a) and with no assistance from the main part of the section then, following a literal interpretation, it would mean that it applies to any statement made by the person charged with an offence to anybody. In that event the person who is authorized to give evidence of the statement will only be the person charged with an offence and not the person to whom it was made, thereby overriding s 60 of the Act. That would

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produce absurd results as many prosecutions are anchored on statements made by persons charged with an offence to persons who are not officers. Offences under the Prevention of Corruption Act 1961, for example, would fall under this category. In such instances the case for the prosecution would depend primarily on the evidence of the person, not being an 'officer' within the meaning of the section, to whom the person charged had made a demand. If such evidence can be given only by the person charged with the offence then many prosecutions would fail even before they can usefully commence as reflected by the appeal before me. That, as Hamid Sultan bin Abu Backer said in his article to which I referred earlier, would give the defence a protection which did not even exist in English common law. Such an interpretation would be completely inconsistent with the purpose for which the section was enacted and all known norms of justice. I must also add that if this paragraph is interpreted disjunctively it will render s 60 of the Act ineffective as far as criminal proceedings are concerned. It is a fundamental rule of statutory interpretation that all sections in a statute shall, as far as possible, be given a meaning. The provisions of an Act must be construed in a way '... that produces the greatest harmony and the least inconsistency' (see *Australian Alliance Assurance Co Ltd v A-G of Queensland* (1916) St R Qd 135). Where there are two provisions in a single piece of legislation which appear to be in conflict, since it is '... improbable that the framers of legislation could have intended to insert a provision which has virtually no practical effect, one should look to see whether any other meaning produces a more reasonable result' (see *Minister for Resources v Dover Fisheries Pty Ltd* (1993) 116 ALR 54). Thus, any interpretation of the section must also be done in the light of other relevant provisions in the Act of which the section forms a part.

The literal meaning of this paragraph and its bizarre ramifications can be avoided if paras (a) and (b) are treated as being cumulative. In this regard Latham CJ said in *Horsey v Caldwell* (1946) 73 CLR 304, at pp 313–314:

> When the word 'or' is used in relation to two or more alternatives, it is not necessarily the case that the alternatives are mutually exclusive. The question as to whether they are mutually exclusive or not must be determined applying the general rule that words should be construed to ascertain the intention of the provision in question to be collected from the whole of its terms.

I also refer to p 537 of *Bindra's Interpretation of Statutes* (7th Ed):

> The word 'and' in a statute may be read as 'or' and vice versa, whenever the change is necessary to effectuate the obvious intention of the legislature (*Raj Nandan Prasad Sinha v State of Bihar* (1982) BLJ 143 (DB); *State of Bihar v S K Roy* AIR 1966 SC 1995). The courts should, however, have recourse to this exceptional rule of construction only when the conversion of the words 'and' and 'or' one into the other, is necessary to carry into effect the meaning and the intention of the legislature; or produces unintelligible or absurd result.

As Lord Halsbury said in *Mersey Docks & Harbour Board v Henderson Bros* (1888) 13 App Cas 595 at p 603 the reading of 'or' as 'and' is not to be resorted to:

> ... unless some other part of the same statute or the clear intention of it requires that to be done.

This can be done even though the result of so modifying the words is less favourable to the subject provided that the intention of the legislature is otherwise quite clear (see *A-G v Beauchamp* [1920] 1 KB 659; *R v Oakes* [1959] 2 All ER 92). With regard to an interpretation that will produce unjust and absurd results *Bennion on Statutory Interpretation* (2nd Ed) says this at p 542:

> It is the basic principle of legal policy that law should serve the public interest. The court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which is in any way adverse to the public interest.

And at p 549:

> It is a principle of legal policy that law should be just, and that court decisions should further the ends of justice. The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. The court should therefore strive to avoid adopting a construction that leads to injustice.

And further at p 679:

> The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.

As I said earlier the purpose for which the section was enacted was to nullify the effect of *PP v Lin Lian Chen* [1992] 2 MLJ 561, that is to say to prevent the accused from introducing in evidence a statement that he had made in the course of the case for the prosecution unless the recording officer had been called as a witness. In my opinion it would never have been the intention of Parliament to pass a law that has the direct effect of frustrating a prosecution by preventing a person from giving evidence of a statement made to him by the person charged with an offence. Yet para (b), read literally, would produce just that effect. In the circumstances the word 'or' separating both the paragraphs should be read conjunctively by substituting 'or' with 'and' in order to achieve the intention of Parliament. The semi-colon before the word 'or' should also be omitted to achieve the desired effect. This is because even a comma preceding the word 'and' has been held to produce a disjunctive result (see *Dato Mohamed Hashim Shamsuddin v A-G, Hong Kong* [1986] 2 MLJ 112). It is permissible to omit a punctuation mark in a statute if the situation warrants it. In *Luby v Newcastle-Under-Lyme Corp* [1965] 1 QB 214 a comma was omitted. Once paras (a) and (b) of the section are interpreted conjunctively they would not be mutually exclusive, as in a literal interpretation with the result that both the paragraphs have to be read as a whole. *Stroud's Judicial*

Dictionary (3rd Ed) Vol 1 says at p 135 that 'and' has generally a cumulative sense requiring the fulfilment of all the conditions that it joins together and is the antithesis of 'or'. The cumulative effect of reading them together is that the statement made by the person charged with an offence as stated in para (b) is the statement he made to an officer as stated in para (a). Thus the statement contemplated by the section would be one that is made by a person charged with an offence to an officer. The substitution of 'or' with 'and' gives it an 'and/or' effect (see *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 2 All ER 97). *Thornton on Legislative Drafting* (4th Ed) also says (at p 96) that one of the meanings of 'A and B may do X' is 'A may do X, B may do X or both A and B may do X'. Thus evidence of the statement may be given by the person charged with an offence or the officer to whom the statement was made or both. This interpretation would also produce harmony between the section and s 60 of the Act. The corollary is that a statement made by a person charged with an offence to a person who is not an 'officer' within the meaning of para (a) may be given in evidence by the person to whom it was made as the section would be inapplicable.

In the upshot it is my view that the section does not apply to just any statement made by a person at anytime to any person. It applies *only* to a statement made by a person charged with an offence to an officer from an investigation agency of the category that I mentioned earlier. A cautioned statement made by a person who has been charged with an offence would fall within the scope of the section. In the appeal before me the evidence excluded by the learned sessions court judge refer to conversations between the accused and the complainant which do not amount to statements made 'to' an 'officer' within the meaning of the section. Accordingly, it is my view that the learned sessions court judge erred in law in disallowing the evidence that the prosecution sought to adduce in evidence and, I therefore quash the order made and order that the accused be retried.

Retrial ordered.

Reported by Mariette Peters-Goh